

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
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Attorney for CHASE HOME FINANCE LLC, SUCCESSOR BY MERGER TO CHASE MANHATTAN
MORTGAGE CORPORATION ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

IN RE:	§	CASE NO. 09-70457-HDH-13
	§	
WAYNE LEE NICHOLSON and	§	
MARIA NINFA NICHOLSON,	§	
Debtor	§	CHAPTER 13
	§	
CHASE HOME FINANCE LLC,	§	
SUCCESSOR BY MERGER TO CHASE	§	
MANHATTAN MORTGAGE	§	
CORPORATION ITS ASSIGNS	§	
AND/OR SUCCESSORS IN	§	
INTEREST,	§	
Movant	§	HEARING DATE: 11/18/2009
	§	
v.	§	TIME: 11:00 AM
	§	
WAYNE LEE NICHOLSON and	§	
MARIA NINFA NICHOLSON;	§	
WALTER O'CHESKEY, Trustee	§	
Respondents	§	JUDGE HARLIN D. HALE

**MOTION OF CHASE HOME FINANCE LLC, SUCCESSOR BY MERGER TO
CHASE MANHATTAN MORTGAGE CORPORATION ITS ASSIGNS AND/OR
SUCCESSORS IN INTEREST
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11
U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO
§ 362(e)**

NOTICE - RESPONSE REQUIRED
**PURSUANT TO LOCAL BANKRUPTCY RULE 4001 (b), A RESPONSE IS
REQUIRED. THE TRUSTEE, IF ONE HAS BEEN APPOINTED, OR THE
DEBTOR SHALL FILE A RESPONSE TO ANY MOTION FOR RELIEF
FROM THE AUTOMATIC STAY WITHIN TWELVE (12) DAYS FROM**

THE SERVICE OF THE MOTION. THE DEBTOR'S RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED. IF THE DEBTOR DOES NOT FILE A RESPONSE AS REQUIRED, THE ALLEGATIONS IN THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

File a written response with the court at:

**CLERK, U.S. BANKRUPTCY COURT
EARLE CABELL U.S. COURTHOUSE, 1100 COMMERCE STREET, Room
1254,
DALLAS, TX 75242-1003**

UNDER BANKRUPTCY RULE 9006 (e) SERVICE BY MAIL IS COMPLETE UPON MAILING; UNDER BANKRUPTCY RULE 9006 (f), THREE (3) DAYS ARE ADDED TO THE PERIOD FOR FILING A RESPONSE WHEN NOTICE OF THE PERIOD IS SERVED BY MAIL.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, CHASE HOME FINANCE LLC, SUCCESSOR BY MERGER TO CHASE MANHATTAN MORTGAGE CORPORATION ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST, by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.
2. On or about September 10, 2009, Debtors (hereinafter "Debtor") filed a petition for an order of relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C.
3. At the time of filing the Chapter 13 petition, Movant held a Note executed on November 20, 2007, by WAYNE LEE NICHOLSON in the original amount of ONE

HUNDRED SIXTY-EIGHT THOUSAND THREE HUNDRED DOLLARS AND ZERO CENTS (\$168,300.00) with interest thereon at the rate of 7.125% per annum. A true and correct copy of the Note is attached hereto as Exhibit "A".

4. The indebtedness is secured by a Deed of Trust dated November 20, 2007 and executed by WAYNE LEE NICHOLSON and MARIA NINFA NICHOLSON on real estate with all improvements known as:

5.08 ACRES OF LAND OUT OF BLOCK 26, TARRANT COUNTY SCHOOL LAND, WICHITA COUNTY, TEXAS, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT AN IRON ROD FOUND IN THE NORTH LINE OF BLOCK 26 AND AT THE NORTHWEST CORNER OF COUNTRY VIEW CONDOMINIUMS, AN ADDITION TO WICHITA COUNTY, TEXAS, AS SHOWN ON PLAT RECORDED IN VOLUME 26, PAGES 583 AND 584, WICHITA COUNTY PLAT RECORDS;

THENCE WITH THE WEST LINE OF COUNTRY VIEW CONDOMINIUMS AS FOLLOWS: S 00 DEG 01' W 353.17 FEET TO AN IRON ROD SET, S 11 DEG 25' E 14.65 FEET TO AN IRON ROD SET, AND S 00 DEG 03' 15' W 706.7 FEET TO AN IRON ROD SET IN THE NORTH LINE OF OLD IOWA PARK ROAD, 170.0 FEET NORTHERLY FROM THE CENTERLINE OF THE FORT WORTH & DENVER RAILROAD TRACKS, SAID ROD BEING 0.2 FOOT NORTH OF AN IRON ROD FOUND, FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE WITH THE NORTH LINE OF OLD IOWA PARK ROAD AND PARALLEL TO AND 170.0 FEET NORTH OF THE CENTERLINE OF SAID RAILROAD, N 79 DEG 20' W 211.5 FEET TO AN IRON ROD SET IN THE OCCUPIED WEST LINE OF A TRACT CONVEYED TO GRANVILLE L. SMITH AND WIFE, BY DEED RECORDED IN VOLUME 1817, PAGE 454, OFFICIAL PUBLIC RECORDS OF WICHITA COUNTY, FOR THE SOUTHWEST CORNER OF THIS TRACT;

THENCE WITH A FENCE, N 00 DEG 17' W 1035.85 FEET TO A 4' FENCE POST IN THE NORTH LINE OF SAID BLOCK 26, FOR THE NORTHWEST CORNER OF THIS TRACT FROM WHICH A FENCE CORNER BEARS N 00 DEG 17' W 1.1 FOOT;

THENCE WITH THE NORTH LINE OF SAID BLOCK 26, S 89 DEG 48' E 210.9 FEET TO THE PLACE OF BEGINNING AND CONTAINING 5.08 ACRES OF LAND.

A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B".

5. Prior to the filing of the petition, Debtors were in default according to the terms and conditions of the Note and Deed of Trust. Debtors have failed to maintain current the obligation due under the Note and are presently due contractually for the May 1, 2009 payment and all subsequent payments. The regular monthly payment is \$1,490.62. The Automatic Stay should be terminated for cause, including Debtors' intent to surrender property located at 1368 Business 28J, Iowa Park, Texas 76367.

6. The outstanding indebtedness to Movant is \$166,047.97 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Note and Deed of Trust.

7. Further cause may exist to terminate the automatic stay if the Debtors fail to provide proof of adequate insurance and payment of applicable taxes by Debtors as required by the Note and Deed of Trust. Movant hereby demands proof of insurance and payment of applicable taxes by Debtors. Movant reserves the right to further assert that Debtors have failed to pay taxes or insurance based on the response of Debtors.

8. In accordance with the terms of the Note and Deed of Trust, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor have failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Note and Deed of Trust.

11. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

12. The provision of Rule 4001 (a) (3) should be waived and Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be made whole by having all post-petition payments brought current. Movant further prays that the Court waive the provision of Rule 4001 (a) (3) and that CHASE HOME FINANCE LLC, SUCCESSOR BY MERGER TO CHASE MANHATTAN MORTGAGE CORPORATION ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

BY: /s/ KADRA ALEXANDER 10/30/2009
KADRA ALEXANDER
TX NO. 24040405
15000 SURVEYOR BLVD. SUITE 100
ADDISON, TX 75001
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Facsimile: (972) 341-0502
E-mail: NDECF@BBWCDF.COM
ATTORNEY FOR MOVANT

CERTIFICATE OF CONFERENCE

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, represents the creditor on the foregoing Motion. The undersigned, an attorney, employed by BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, states that prior to filing the foregoing motion he/she did the following:

Debtor's Counsel failed to respond to the creditor's communication by the same time on the second business day after such communication.

NOTES: Kadra Alexander called Debtors' counsel and left a message for Sara. Sara did not return Ms. Alexander's call and therefore Debtors' are presumed to be opposed to the Motion.

Date of Conference Call: October 23, 2009 4:24 p.m.

BY: /s/ KADRA ALEXANDER 10/30/2009
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E-mail: NDECF@BBWCDF.COM
ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2009, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

/s/ KADRA ALEXANDER 10/30/2009

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ATTORNEY FOR MOVANT

DEBTORS:

WAYNE LEE NICHOLSON
408 EAST BANK
IOWA PARK, TX 76367

MARIA NINFA NICHOLSON
1368 BUSINESS 287J
IOWA PARK, TX 76367

MARIA NINFA NICHOLSON
408 EAST BANK
IOWA PARK, TX 76367

WAYNE LEE NICHOLSON
1368 BUSINESS 287J
IOWA PARK, TX 76367

TRUSTEE:

WALTER O'CHESKEY
6308 IOLA AVENUE
LUBBOCK, TX 79424

US TRUSTEE:

1100 COMMERCE STREET, ROOM 976
EARLE CABELL FEDERAL BLDG
DALLAS, TX 75242

DEBTOR'S ATTORNEY:

MONTE J WHITE
1106 BROOK AVENUE
WICHITA FALLS, TX 76301

PARTIES IN INTEREST:

IRS SPECIAL PROCEDURES
1100 COMMERCE ST.,
ROOM 951 MAIL STOP 5029
DALLAS, TX 75246

MONTE J. WHITE & ASSOCIATES
1106 BROOK AVE
WICHITA FALLS, TX 76301

PARTIES REQUESTING NOTICE:

GE MONEY BANK
RECOVERY MANAGEMENT SYSTEMS CORP.
25 SE 2ND AVENUE
SUITE 1120
MIAMI, FL 33131

PAMELA ARNOLD BASSEL
P.O. BOX 11509
FORT WORTH, TX 76110